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Patent and Trademark Office**

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*S.R.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/522,499    03/10/00    HARPER    V    99-1107

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QM12/0103

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EXAMINER
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KIDWELL, M	
ART UNIT	PAPER NUMBER

3761

*#3*

DATE MAILED:

01/03/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/522,499

Applicant(s)

HARPER, VERNICE J.

Examiner

Michele M. Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2000 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

  
**GLENN K. DAWSON**  
**PRIMARY EXAMINER**

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "10" and "11" have both been used to designate a base panel.

Additionally, reference character "10" has been used to designate both a feminine hygiene article and a base panel. Correction is required.

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Feminine Hygiene Article with Upstanding Member.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 8 recite the limitation "the undergarments" in line 2 of each claim. There is insufficient antecedent basis for this limitation in the claims.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US 6,059,763).

With respect to claim 1, Brown teaches a feminine hygiene article (10) having a base panel with a top and bottom surface (12), an upstanding member having a top side, a bottom side and a peripheral wall extending therebetween (14) and a sealing member having a front side and a back side with the front side being fixedly coupled to the bottom surface of the base panel (23). Brown also discloses the upstanding member to be fixedly coupled to the top surface of the base panel as set forth in col. 6, lines 38 – 40.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 – 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,059,763).

As to claim 2, as best understood by the Examiner, Brown discloses a base panel having a peripheral edge (figures 1, 1a and 1c) with a lip being coupled to and extending upwardly away from said peripheral edge (16 as shown figures 5 – 7). Brown does not teach the base panel to specifically comprise a cotton material. However, it would have been obvious to one of ordinary skill in the art to provide the article with a cotton material since cotton is well known in the art to provide added comfort next to the skin of the wearer while absorbing unwanted fluids. Additionally, Brown discloses a compressed, absorbent material, which may constitute cotton, for use in the article as set forth in col. 6, lines 11 – 33.

With respect to claim 3, Brown teaches the article with a base pad having a generally rectangular shape as set forth in figures 1, 1a, and 1c. Brown does not state a specific height for the base panel. However, it is well known in the art to provide the base panel with a minimal height in order to provide an article with less bulk thereby minimizing the appearance of the article under clothing.

Claims 4 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown as applied to claims 1 – 3 above, and further in view of Hartman (US 5,833,680).

Regarding claim 4, Brown discloses the article meeting all of the limitations of the claim as shown in figures 1, 1a, and 1c with the exception of the upstanding member having a base side length approximately twice as long as a width of the top side. Similarly, Hartman discloses an article with an upstanding member which has a base side length approximately twice as long as a width of the top side as shown in

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figures 2, 4, 6, and 7. Although the figures of Hartman have not disclosed an exact measurement of the top and bottom width of the upstanding member, it can be ascertained from the figures that the length of the base side is approximately twice as long as the length of the top side. Additionally, it would have been obvious to one of ordinary skill in the art to provide the base length of the upstanding member with a length approximately twice as long as the width of the top side in order to provide the article with a more effective fluid seal thereby providing controlled movements of the discharged fluid and better leakage protection.

With respect to claim 5, Brown teaches the article comprising an upstanding member with a peripheral wall as previously recited. Although Brown does not designate a specific height to the peripheral wall, it would be obvious to provide the peripheral wall with a height approximately between one and two inches since the purpose of the upstanding member is to extend into a body opening of a user in order to absorb secreted body fluids from that opening. Therefore, if the base panel is attached to the undergarments of a user, it would be obvious to provide the upstanding member with the claimed height in order for the upstanding member to extend into the vaginal cavity.

As to claim 6, Brown teaches the article wherein the sealing member (23) further comprises a size and shape being substantially identical to the bottom surface as shown in figure 1c. Brown does not teach this member to comprise a plastic or to be liquid impermeable. However, Hartman discloses an article with a plastic, liquid impermeable sealing member (7) as set forth in col. 2, lines 49 – 55. It is well known in

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the art to provide absorbent articles with a liquid impervious layer in order to protect undergarments and any other clothing that is found under the article from accidental leakage of bodily fluids.

Regarding claim 7, Brown teaches the article further comprising an adhesive member (25, 39) for removably attaching sealing member to the undergarments of a user (col. 5, line 65 to col. 6, line 4 and figure 1c).

With respect to claim 8, see the rejections of claims 1 – 7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed Monica Graves, Patent Analyst, whose telephone number is 703-305-3002.



Michele Kidwell  
December 27, 2000



GLENN K. DAWSON  
PRIMARY EXAMINER

**ATTACHMENT TO AND MODIFICATION OF**  
**NOTICE OF ALLOWABILITY (PTO-37)**  
**(November, 2000)**

**NO EXTENSIONS OF TIME ARE PERMITTED TO FILE CORRECTED OR FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION**, notwithstanding any indication to the contrary in the attached Notice of Allowability (PTO-37).

If the following language appears on the attached Notice of Allowability, the portion lined through below is of no force and effect and is to be ignored<sup>1</sup>:

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to comply will result in ABANDONMENT of this application. ~~Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).~~

Similar language appearing in any attachments to the Notice of Allowability, such as in an Examiner's Amendment/Comment or in a Notice of Draftperson's Patent Drawing Review, PTO-948, is also to be ignored.

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<sup>1</sup> The language which is crossed out is contrary to amended 37 CFR 1.85(c) and 1.136. See "Changes to Implement the Patent Business Goals", 65 Fed. Reg. 54603, 54629, 54641, 54670, 54674 (September 8, 2000), 1238 Off. Gaz. Pat. Office 77, 99, 110, 135, 139 (September 19, 2000).